Competitive Carriers Association
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July 21, 2017

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: NOTICE OF EX PARTE
WT Docket No. 17-79: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;*
WT Docket No. 15-180: *Revising the Historic Preservation Review Process for Wireless Facility Deployment;*
WC Docket No. 17-84: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment.*

Ms. Dortch:

Steven K. Berry, President & CEO, Rebecca Murphy Thompson, EVP & General Counsel, and I, with Competitive Carriers Association ("CCA"),[1] met with staff from the Federal Communications Commission's ("FCC" or the "Commission") Wireless Competition Bureau and Wireline Competition Bureau on July 19, 2017 to discuss infrastructure issues addressed in the docketed proceedings. A full list of FCC participants is listed below. In both meetings, CCA encouraged the Commission to quickly update and strengthen national siting rules and act as expeditiously as possible. Although the Chairman's newly-created Broadband Deployment Advisory Committee will certainly influence the Commission's infrastructure policies, such as Commission-endorsed model siting codes, the record depicts an undisputed need for updated and streamlined rules.

CCA expressed support for many of the Commission's proposals, especially the need for historic review reform and clarification. CCA explained the need for the Commission to explicitly provide that Tribal fees, including up-front "review" fees along with fees related to site monitoring, are not required for historic review compliance. This is appropriate considering no Commission

[1] CCA is the nation's leading association for competitive wireless providers and stakeholders across the United States. CCA's membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 150 associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

rule, Advisory Counsel for Historic Preservation ("ACHP") rule, or the National Historic Protection Act itself, requires fees for compliance. Tribal fees are rising, and are typically assessed before any Historic Property is suspected or found. Tribal Nations have not explained these rising fees, and allowing unlimited siting fees stands contrary to the Commission's ultimate goal: ubiquitous broadband deployment. Equally important, the Commission should not allow, as is current practice, the siting application processing to stall until applicants conduct a customized cultural review, at least before Historic Property is evinced.[2] To that end, CCA stressed the need for explicit clarification on these issues.

CCA also suggested that the Commission rework the Tower Construction Notification System ("TCNS"). For example, all siting stakeholders would benefit if the Commission narrows the scope of required information submissions to the information required by FCC Form 620/621; this preliminary information would immediately be submitted, via a standardized form, to any Tribe that flagged on TCNS the underlying deployment area.[3] Tribes should then be allotted no more than 30 days to review the information and respond with evidence of potential or actual Historic Property. Any Tribal concerns could be reviewed, addressed and included in the subsequent "final" Form 620/621 submission. CCA stands willing to work with the Commission to streamline and make more efficient TCNS and the historic review process, recognizing the multifaceted issues involved.

Next, CCA discussed the need for broader siting exclusions, focusing on small cell and distributed antenna system ("DAS") historic review exclusions. Limiting review for this non-intrusive network architecture is necessary to support next-generation deployment. The Commission should exclude small cell and DAS deployments from the definition of "federal undertaking" under the National Historic Preservation Act or more uniformly exclude these

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[2] *See* Comments of Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, at 36 (filed June 15, 2017) ("More precisely, [under the National Programmatic Agreement] applicants are instructed to 'seek guidance' from the FCC in the event of 'any substantive or procedural disagreement…or if the Indian tribe or NHO does not respond to the Applicant's inquiries.' But, if there is a disagreement regarding 'identification or eligibility of a property,' the FCC must use ACHP's rules. A dispute resolving fees would seem to be a 'substantial or procedural disagreement,' that the FCC is empowered to resolve under the NPA, so long as the issue is detached from a dispute regarding 'identification or eligibility of a property'"), *citing* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 CFR Part 1, App'x C, § IV.G ("NPA").

[3] Currently, siting applicants may provide additional details with initial TCNS notice, but it is not standardized. *See* http://wireless.fcc.gov/outreach/notification/TCNS_industry.pdf.

deployments from historic review.[4] Both actions are rational[5] and within the Commission's authority.[6]

Regarding state and local siting barriers, CCA urged the Commission to adopt a "deemed granted" remedy when Section 332[7] shot clocks expire, and shorten shot clocks to 30 days for collocations and 60 days for all other deployments. The Commission also should clarify that shot clocks begin when an application is filed, and can only be suspended where: (1) an applicant fails to respond to an additional information request rooted in statute or printed in the application itself within three days; or, (2) there is an actual emergency (*i.e.*, a state or federal declared natural disaster).

CCA reiterated how uniformly interpreting shared language in Sections 253[8] and 332 regarding rules that "prohibit" deployment will streamline nationwide siting. The Commission should clarify the applicable standard, using the language in *California Payphone*.[9] A non-exhaustive

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[4] *See* NPA; *see also* Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, App'x B *and Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas,* Public Notice, 31 FCC Rcd 4617 (WTB 2016).

[5] *See, e.g.,* Comments of Sprint Corporation, WT Docket No. 17-79, WC Docket No. 17-84, at 30 (filed June 15, 2017) (noting that "Antenna construction is an infinitesimal share of all ground disturbance in this country in comparison to agriculture, housing construction, shopping malls, roads, electrical transmission towers, stadiums, parking lots, etc., none of which require historical or tribal review…[T]he current system [wrongly focuses on] the pinprick footprints of poles to support antennas while ignoring almost all other ground disturbing activities across the nation").

[6] First, if small cells and DAS are indeed a federal undertaking, the Commission is empowered to reframe the scope of what activities are considered a federal undertaking under its jurisdiction. *See* NPA § I.B ("The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA. Nothing in this Agreement shall preclude the Commission from revisiting or affect the existing ability of any person to challenge any prior determination of what does or does not constitute an Undertaking"); *see also* 36 CFR § 800.3 (the FCC may "determine whether the proposed Federal action is an undertaking…and, if so, whether it is a type of activity that has the potential to cause effects on historic properties"). Alternatively, the Commission may decide that a federal undertaking is not subject to the historic review process at all, as small cells and DAS are not "a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present." *See* 36 CFR § 800.3(a)(1). Or, the Commission may more uniformly exclude small cell and DAS deployments in the NPA, especially considering broad record support testifying to their minimal to nonexistent impact on Historic Property. The ACHP's rules governing program alternatives like the NPA specify that a federal agency may "propose a program or category of undertakings that may be exempted from review" if the provided criteria is met; in pertinent part, if the "potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse." *See* 26 CFR 800.14(c)(1); *see also id.* at (c)(1)(ii). This is certainly true of small cells and DAS, and the Commission should not hesitate to make this determination.

[7] 47 U.S. Code § 332 ("Section 332").

[8] *Id.* § 253 ("Section 253").

[9] A prohibitive practice is one that either: (1) materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment; or (2) creates a substantial barrier to entry into or participation in the provision of telecommunications. *See California*

list of practices that are "prohibitive" should accompany the Commission's statutory clarification, including *de facto* and *de jure* moratoria, application requirements to prove coverage needs, application requirements to justifying network design, and exorbitant, arbitrary fees.

The Commission also should clarify that Section 253's limit on "fair and reasonable compensation" to right-of-way ("ROW") access denotes publicly-available fees and rents that are tied to direct application review and site maintenance costs. CCA also discussed how consultant fees have greatly contributed to raised siting fees. Relatedly, the Commission should provide guidance that "competitively neutral and nondiscriminatory" fees under Section 253 do not allow charges imposed on a provider for ROW access may not exceed the charges imposed on other providers for similar access, and "competitively neutral and nondiscriminatory" management should explicitly prohibit localities from unlawfully discriminating between different types of providers (*e.g.*, wireless versus wireline).

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/ Elizabeth Barket

Elizabeth Barket
Law & Regulatory Counsel
Competitive Carriers Association

CC: **Wireless Competition Bureau Attendees:**
Suzanne Tetreault
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Charles Eberle
Peter Trachtenberg
Garnet Hanly
Erica Rosenberg
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Wireline Competition Bureau Attendees:
Terri Natoli
John Visclosky

Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934, CCB Pol. 96-26, Memorandum Opinion and Order, 12 FCC Rcd 14191, 14209, ¶ 38 (1997).

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